

§ 5.415

responsible entity determines that an applicant does not qualify for a federal preference, ranking preference, or local preference claimed by the applicant, the responsible entity must promptly give the applicant written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with a representative of the responsible entity to review the determination. The meeting may be conducted by any person or persons designated by the responsible entity, who may be an officer or employee of the responsible entity, including the person who made or reviewed the determination or a subordinate employee.

(2) The applicant may exercise other rights if the applicant believes that the applicant has been discriminated against on the basis of race, color, religion, sex, national origin, age, disability or familial status.

(h) *Residency preferences.* A “residency preference” is a preference for admission of families that reside anywhere in a specified “residency preference area.” A residency preference may be used as a ranking or local preference.

(1) *Section 8 programs other than Certificate/Voucher and Project-Based Certificate.* In these developments, local residency requirements are prohibited.

(2) *Section 8 Certificate/Voucher and Project-Based Certificate programs.* Any residency preference must be approved by HUD.

(i) A county or municipality may be used as a residency preference area.

(ii) An area smaller than a county or municipality may not be used as a residency preference area.

(3) *All projects.* With respect to any residency preference, applicants who are working or who have been notified that they are hired to work in the residency preference area shall be treated as residents of the residency preference area. A residency preference may not be based on how long the applicant has resided in or worked in the residency preference area.

(i) *Nondiscrimination.* (1) Any selection preferences must be established and administered in accordance with the following authorities:

24 CFR Subtitle A (4-1-00 Edition)

(i) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1;

(ii) The Fair Housing Act (42 U.S.C. 3601-3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110;

(iii) Executive Order 11063 on Equal Opportunity in Housing and the implementing regulations at 24 CFR part 107;

(iv) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8;

(v) The Age Discrimination Act of 1975 (42 U.S.C. 6101-6107) and the implementing regulations at 24 CFR part 146; and

(vi) The Americans with Disabilities Act (42 U.S.C. 12101-12213) to the extent applicable.

(2) Such preferences also must be consistent with HUD’s affirmative fair housing objectives and (where applicable) the owner’s HUD-approved affirmative fair housing marketing plan.

(Approved by the Office of Management and Budget under OMB control numbers 2577-0105 and 2502-0372)

[61 FR 9041, Mar. 6, 1996, as amended at 62 FR 27125, May 16, 1997]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, § 5.410 was removed, effective Apr. 28, 2000.

§ 5.415 Federal preferences: General.

(a) *Definitions.* The definitions of these preference categories stated in §§ 5.420, 5.425, and 5.430 must be used by the responsible entity, except that an HA may use its own alternative definitions if they have been approved by HUD.

(b) *Ranking preferences: selection among federal preference holders.* The responsible entity’s system of administering the federal preferences (its admission policy, in the case of the Section 8 Certificate/Voucher programs) may provide for use of ranking preference for selecting among applicants who qualify for federal preference.

(1) The responsible entity may give preference to working families—so long as the prohibition of § 5.410 against selection based on income and the non-discrimination provisions that protect against discrimination on the basis of age or disability are not violated. (If a

responsible entity adopts such a preference, it may not give greater weight to an applicant based on the amount of employment income, and an applicant household shall be given the benefit of the preference if the head and spouse, or sole member, are age 62 or older or are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's inability to work.) A responsible entity may give preference to graduates of, as well as active participants in, educational and training programs that are designed to prepare individuals for the job market. The responsible entity also may use the housing agency's "local preferences" for the Section 8 Certificate and Voucher programs to rank federal preference holders.

(2) The ranking preferences may give different weight to the federal preferences, through such means as:

(i) Aggregating the federal preferences (e.g., provide that two federal preferences outweigh one);

(ii) Giving greater weight to holders of a particular category of federal preference; or

(iii) Giving greater weight to a federal preference holder who fits a particular category of federal preference.

(c) *Qualifying for a federal preference—*
(1) *Certification of preference.* An applicant may claim qualification for a federal preference by certifying to the responsible entity that the family qualifies for federal preference. The responsible entity must accept this certification, unless the responsible entity verifies that the applicant is not qualified for federal preference.

(2) *Verification of preference.* (i) Before admitting an applicant on the basis of a federal preference, the responsible entity must require the applicant to provide information needed by the responsible entity to verify that the applicant qualifies for a federal preference because of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a federal preference between the time of application and selection for admission, including a change from one federal preference category to another.

(ii) In the case of Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs, the owner must use the verification procedures specified in §5.420(c) (involuntary displacement); §5.425(c) (substandard housing); and §5.430(b) (rent burden). In the case of the Section 8 Certificate/Voucher, Project-Based Certificate, and Moderate Rehabilitation programs and the public housing program, the HA may adopt its own verification procedure.

(iii) Once the responsible entity has verified an applicant's qualification for a federal preference, the responsible entity need not require the applicant to provide information needed by the responsible entity to verify such qualification again unless:

(A) The responsible entity determines reverification is desirable because a long time has passed since verification; or

(B) The responsible entity has reasonable grounds to believe that the applicant no longer qualifies for a federal preference.

(3) *Effect of current residence in assisted housing.* No applicant is to be denied a federal preference for which the family otherwise qualifies on the basis that the applicant already resides in assisted housing; for example, the actual condition of the housing unit must be considered, or the possibility of involuntary displacement resulting from domestic violence must be evaluated.

(d) *Approval of special conditions satisfying preference definitions.* With respect to Section 8 programs other than the Section 8 Certificate/Voucher, Project-Based Certificate and Moderate Rehabilitation programs, HUD may specify additional conditions under which the federal preferences, as described in §§5.420, 5.425, and 5.430, can be satisfied. In such cases, appropriate certification of qualification must be provided. (See HUD Handbook 4350.3, which is available at HUD field offices.)

(Approved by the Office of Management and Budget under OMB control number 2502-0372 and 2577-0105)

[61 FR 9043, Mar. 6, 1996]

EFFECTIVE DATE NOTE: At 65 FR 16716, Mar. 29, 2000, §5.415 was removed, effective Apr. 28, 2000.